

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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JON DAVID BROOKS,

Criminal No. 03-142 (JRT/FLN)

Civil No. 04-4976 (JRT)

Petitioner,

v.

**ORDER DENYING  
§ 2255 PETITION**

UNITED STATES OF AMERICA,

Respondent.

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Jon David Brooks, No. 04457-041, Federal Prison Camp, P.O. Box 1000,  
Duluth, MN 55814, petitioner *pro se*.

Andrew R. Winter, Assistant United States Attorneys, OFFICE OF THE  
UNITED STATES ATTORNEY, 600 United States Courthouse, 300 South  
Fourth Street, Minneapolis, MN 55415, for respondent.

Petitioner Jon David Brooks (“Brooks”) pleaded guilty to possession with intent to distribute methamphetamine in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(A) and was sentenced to 60 months imprisonment on January 13, 2004. Brooks timely filed a motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255, seeking relief under *Blakely v. Washington*, 124 S. Ct. 2531 (2004).<sup>1</sup> He raises no issues other than the applicability of *Blakely* to his sentence. This Court has determined that the rule announced in *Blakely* does not apply retroactively to matters on collateral review. *See Rodriguez v. United States*, Crim. No. 00-276 (JRT) (D. Minn. March 8, 2005). Accordingly, under this Court’s interpretation of the law, petitioner’s motion for relief

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<sup>1</sup> Brooks subsequently filed a motion for an extension of time to submit a supporting memorandum. As the Court has conclusively decided that the grounds for relief asserted by petitioner are not available to him for procedural reasons, no additional briefing is necessary and the Court will deny the motion as moot.

pursuant to § 2255 cannot be granted on the basis of *Blakely*.<sup>2</sup> However, as the question of whether *Blakely* applies retroactively to cases on collateral review has not yet been addressed in this circuit, the Court grants a certificate of appealability with respect to this question. *See* 28 U.S.C. § 2253.

### ORDER

Based on the foregoing, and all of the records, files and proceedings herein, **IT IS HEREBY ORDERED** that:

1. Petitioner's Motion to Vacate pursuant to 28 U.S.C. 2255 [Docket No. 25] is **DENIED**.
2. Petitioner's Motion for Extension of Time [Docket No. 28] is **DENIED as moot**.
3. Petitioner's Petition to Amend and Supplement Motion and Memorandum of Law Pursuant to 28 U.S.C. 2255 [Docket No. 31] is **DENIED**.
4. The Court **GRANTS** a certificate of appealability with respect to the question of whether *Blakely* applies retroactively to cases on collateral review.

The Clerk of Court is respectfully directed to mail a copy of this Order to the petitioner.

DATED: June 20, 2005  
at Minneapolis, Minnesota.

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s/ John R. Tunheim  
JOHN R. TUNHEIM  
United States District Judge

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<sup>2</sup> Brooks also filed a petition to amend and supplement his § 2255 motion elaborating on his arguments pursuant to *Blakely*. Based on the Court's holding on Brooks' initial petition, the Court will deny this petition as well.